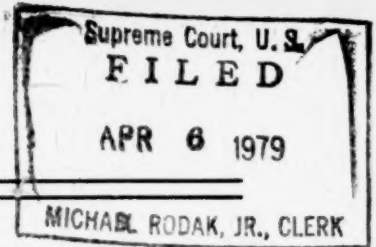


APPENDIX



In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-740

CECIL D. ANDRUS, ET AL.,

Appellants

—v.—

L. DOUGLAS ALLARD, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JURISDICTIONAL STATEMENT FILED NOVEMBER 21, 1978
PROBABLE JURISDICTION NOTED FEBRUARY 21, 1979

In the Supreme Court of the United States

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Appellants

—v.—

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RELEVANT DOCKET ENTRIES

NOTICE OF APPEAL
TO THE SUPREME COURT

Three-Judge Court
Judges Winner, Barrett & Matsch
J S 6—6/7/78

L. DOUGLAS ALLARD and CAROL S. ALLARD; PIERRE G. BOVIS and SYLVIA BOVIS; DENIS C. EROS; ALEXANDER G. KELLEY; and ROBERT G. WARD, PLAINTIFFS

v.

CECIL D. ANDRUS, Secretary of Interior; ROBERT HERBST, Assistant Secretary of the United States Fish and Wildlife Service, Department of the Interior; LYNN GREENWALT, Director of the United States Fish and Wildlife Service, Department of the Interior; and HARVEY WILLOUGHBY, Regional Director of Region 6, United States Fish and Wildlife Service, Department of the Interior

CAUSE

Complaint to determine Constitutionality of Eagle Protection Act (16 USC § 668-668b) and Migratory Bird Treaty Act (16 USC § 703-711)

ATTORNEYS

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Edward Shawaker
Appellate Section
LANDS & NATURAL RESOURCES DIVISION
Room 2339
DEPARTMENT OF JUSTICE
Washington, D.C. 20530

DATE	PROCEEDINGS
1975	
9/19	COMPLAINT—pd Summons Issued Notification of Claim of Unconstitutionality
9/24	Sgd (DTL, Chief Judge U.S.C./A., 10th Circuit) ORDER appointing 3/J Court to consist of McWilliams, Winner & Matsch . . . eod 9/26/75
9/26	Ltr to counsel from clerk re 3/J court
10/23	Transmittal letter from FMW to DTL, Chief Jdg
11/6	Marshal's Return on S & C . . . service on USA dfdts 9/23/75; Dr. Charles M. Loveless 9/29/75
11/24	ANSWER OF Dfdts . . . C.O.S.
1976	
1/20	MOTION of National Audubon Society, Inc. & the Environmental Defense Fund, Inc. to Intervene as Dfdts TENDERED INTERVENORS' ANSWER Certificate of Service of Motion & Tendered Answer
1/23	Certificate of Service of Dfdt's first interrogs
1/26	Memorandum of Points and authorities in support of Motion of National Audubon Society, Inc. & Environ- mental defense Fund, Inc., to intervene as Dfdts . . . with attachments . . . C.O.S.
1/29	Dfdt's Memorandum in Support of the Motion for In- tervention by the National Audubon Society & the En- vironmental Defense Fund . . . with attachments . . . C.O.M.
1/30	Pltf's Objection to Motion to intervene as Dfdt filed by National Audubon Society, Inc. & Environmental De- fense Fund, Inc., Applicants . . . C.O.M. Brief in support of above objection . . . C.O.M.
2/4	Reply Memorandum in support of Motion of National Audubon Soc. Inc. & Environmental Defense Fund, Inc. to Intervene as dfdts . . . C.O.S.

DATE	PROCEEDINGS
2/9	Sgd (RHMW; FMW; RPM) ORDER . . . Motion of National Audubon Society & Environmental Defense Fund to Intervene is DENIED . . . C.O.S. . . . ed. 2/9/76
2/3	MOTION by National Audubon Society, Inc. & Environ- mental Defense Fund, Inc. for reconsideration or re- argument of intervention . . . C.O.S.
2/10	Dfdt's Response to Movants' Motion for reconsidera- tion or reargument
3/3	Certificate of Service of Plt's Req. for Admis, First Set Certificate of Service of Pltf's interrogs of Dfdts, First Set Pltf's Reply to Motion for Reconsideration or reargument filed by National Audubon Society, Inc. & Environmental De- fense Fund, Inc. . . . C.O.M.
3/26	Sgd (RHMW; FMW; RPM) ORDER . . . Motion for reconsideration or reargument is DENIED . . . C.O.M. . . . eod 3/26/76
4/2	NOTICE of Appeal by Movants for Intervention of Order of 2/9/76—Due 5/12/76—Conf. 4/15/76—9:00 a.m., Served 4/8/76. Bond on Appeal Designation of Contents of Record on Appeal . . . Cert. of Service. Copy of letter on file: Case docketed—C/A #76-1251.
4/13	Certificate of Service of Answers to Interrogs, First set & dfdt's Response to Req. for Admis. First Set
4/15	Objections to Pltf interrogs, First set. . . C.O.S. Objections by Defts to pltf's Request for Admissions, first set . . . C.O.S.
4/22	Certificate of Conference re: Rule 6 . . . C.O.M.
4/22	MOTION of Pltf for Order to compel Answers to interrogs and answers to Request for admissions and memorandum brief in support . . . C.O.M.

DATE	PROCEEDINGS
4/30	MOTION of Dfdts for Partial Summary Judgment . . . C.O.S. MOTION of Dfdts to Stay Discovery Proceedings . . . C.O.S.
5/10	Amended MOTION for Partial Summary Judgment or to Dismiss by Dfdts . . . C.O.M. Affidavit of Loren Keith Parcher Memorandum in Support of dfdts' Motion to dismiss or for partial summary judgment . . . C.O.S.
5/12	Receipt Court of Appeals for Volume I of the Record on Appeal.
5/13	NOTICE OF HEARING (FMW) 3 Judge . . . all pending motions set 9 a.m. 8/23/76 . . . C.O.M. . . . eod 5/14/76
5/19	Pltf's Memorandum in Opposition to Dfdt's Motion for partial Summary Judgment & Amended Motion for partial Summary Judgment or to dismiss . . . with attachments . . . C.O.S.
5/24	Dfdt's Reply in Support of Motion for Partial Summary Judgment . . . C.O.S.
5/25	MOTION of Pltfs for Substitution of parties . . . Thomas S. Kleppe, Sec. of the Interior for deft Kent Frizzell & Harvey Willoughby, Regional Director of Region 6, etc. for Ddt Dr. Charles M. Loveless . . . C.O.S. MOTION of Pltfs to Strike: Alternatively, Motion for the Taking of Oral Testimony and for the Issuance of a Subpoena Duces Tecum . . . (to strike affidavit of Loren Keith Parcher: subpoena for U.S. Fish & Wildlife Serv.) . . . C.O.S. . . . with attachments
6/17	Memorandum in Opposition to Pltf's Motion to Strike . . . C.O.M.
6/19	Sgd (RHMW, FMW, RPM) 6/7/76 . . . ORDER Substitution of Parties . . . Thomas S. Kleppe, as Sec. of the Interior & Harvey Willoughby as Regional Director of Region 6 are substituted as dfdts for Kent Frizzell & Dr. Charles M. Loveless

DATE	PROCEEDINGS
6/30	MOTION of Plf for Summary Judgment . . . COM Memo in Support of Plf Motion for Summary Judgment . . . COM Affidavit of John P. Akolt III
7/13	NOTICE OF INFORMAL CONFERENCE . . . set 8 a.m. 7/20/76 . . . C.O.M. . . . eod 7/14/76 MANDATE . . . Judgment Affirmed . . . eod 7/16/76. Opinion.
7/19	PETITION of National Audubon Society & the Environmental Defense Fund, Inc to appear as <i>amici curiae</i> . . . COM
7/20	Ltr from FMW to counsel vacating 8/23/76 hearing on motions for summary judgment
7/21	Vol 1 Record on Appeal received
7/22	Notice to Take Depositions upon oral examination of all pltfs: L. DOUGLAS ALLARD, PIERRE G. BVOIS, DENIS C. EROS & Robert G. WARD . . . COS Request for Production of Documents by dfdts . . . COS
7/27	Sgd (RHMW: FMW: RPM) ORDER . . . the request of the National Audubon Society & the Environmental Defense Fund to appear as <i>amicus curiae</i> is DENIED . . . COM eod 7/28/76
8/2	Pltf's Response to dfdt's req. for production of documents & pltf's MOTION for Protective Orders re: dfdt's Notice to Take Depositions
8/6	Sgd (FMW) ORDER . . . intelligence requested from U.S. Attny office re Immunity from federal & state prosecution . . . see document for details . . . COM . . . eod 8/9/76
8/9	REQUEST by Pltfs for entry of formal order compelling answer to interrogs & req. for admiss . . . COM
8/12	Certificate of Mailing of Pltf's Interrogs to dfts, second set

DATE	PROCEEDINGS
8/13	Dfdt's Memorandum in Opposition to pltf's motion for order to compel answers to interogs & answers to requests for admissions & to pltf's request for entry of formal order . . . COS
8/20	Hearing (FMW) Pltf's Req. for Entry of Formal Order . . . ORDERED: Gov't counsel to answer interogs on or before 8/27/76 . . . recess . . . eod 8/23/76 Request of Dfdt for Production of Documents. . . . COS
9/13	Reply of Pltf's to Request for Production of Documents . . . COM
9/28	Certificate of Service on Answers to Pltf's Interogs to dfdts, Second set
10/1	Dfdt's MOTION for Summary Judgment . . . COS Memorandum in Opposition to Pltf's Motion for Summary Judgment & In Support of Dfdt's Motion for Summary Judgment . . . with attachments
10/14	Pltf's Memorandum answer to the dfdt's motion for summary judgment dated 10/1/76 . . . with attachments . . . COM
	Supplement to Pltf's Memorandum in Opposition to defdt's Motion for partial summary judgment & amended Motion for partial summary judgment or to dismiss . . . COS Response to Req. for Admissions, First Set Answers to Pltf's Interogs to dfdts, Second Set
10/27	REPLY of def to Plf Memorandum Answer . . . COS
11/24	Supplement to Dfdt's MOTION for Summary Judgment . . . COS w/attachments
1977	
11/3	Sgd 11/1/77 (D.T. Lewis, Chief Judge) ORDER . . . 3/Judge panel shall now consist of James E. Barrett, Circuit Judge, Judge Winner & Judge Matsch . . . COM . . . eod 11/3/77

DATE	PROCEEDINGS
	Memo of Clerk to Judge Barrett transmitting copy of ltr— if he does not get copy file from Judge McWilliams, we will provide him with a copy
11/23	NOTICE OF HEARING (FMW) . . . 3/Judge hearing set 1:30 p.m. 3/10/78 . . . COM . . . eod 11/23/77
1978	
3/10	MOTION of Pltf's for Substitution of Parties HEARING (JEB, FMW, RPM) TRIAL TO COURT . . . Motion for Substitution of dfdt parts is ORDERED: GRANTED . . . Matter taken under consideration of the Court . . . COM . . . eod 3/13/78
6/7	Sgd (JEB, FMW & RPM) MEMORANDUM OPINION & ORDER . . . ORDERED: the Clerk shall enter judgment for the pltf's declaring the subject regulations to be invalid & unenforceable as against the pltf's property rights in feathers & artifacts owned before the effective date of the subject statute & enjoining the dfdts from any interference w/the exercise of such rights, including the rights of sale, barter or exchange . . . COM . . . eod 6/7/78
	Sgd (JRM, Clerk)—Judgment . . . ORDERED: Judgment entered for the pltf's as set forth in the above Memorandum Opinion & Order . . . FURTHER ORDERED: Pltf shall recover costs upon the filing of a Bill of Costs with the Clerk of this Court w/in 10 days . . . COM . . . eod 6/7/78
7/5	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, filed by Defendants re Final Judgment entered June 7, 1978.
7/6	Copy of Letter from the Court of notification that a request for the transmission of the Record must be in writing with a designation.
7/14	Letter from the U.S. Attorney instructing that Edward Shawaker, Appellate Section, LANDS & NATURAL RESOURCES DIVISION, should be placed on the mailing list.

DATE	PROCEEDINGS
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- 8/8 NOTICE OF APPEAL TO THE TENTH CIRCUIT OF APPEALS, filed by Defendants, re Fin. Judgment entered June 7, 1978. RECORD DUE: 9/18/78.
- 8/31 MOTION of Defendants to Extend Time to File Notice of Appeal to be directed to the Court of Appeals. C.O.S.
- 9/12 Signed (FMW) 9/12, ORDER that request for an extension of time to appeal to the Court of Appeals is *denied*. C.O.M. eod 9/15.
- 9/24 NOTICE OF APPEAL, filed by by Defendants, re Order of 9/12/78. Conf. set for Fri., Nov. 3, 1978, at 8:30 a.m., RECORD DUE: 12/4/78.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 75 1000

[Filed Sep. 19, 1978]

L. DOUGLAS ALLARD and CAROL S. ALLARD; PIERRE G. BOVIS and SYLVIA BOVIS; DENIS C. EROS; ALEXANDER G KELLEY; and ROBERT G. WARD; PLAINTIFFS

vs.

KENT FRIZZELL, Solicitor of the Department of the Interior and Acting Secretary of the Interior; NATHANIEL REED, Assistant Secretary of the United States Fish and Wildlife Service, Department of the Interior; LYNN GREENWALT, Director of the United States Fish and Wildlife Service, Department of the Interior; and DR. CHARLES M. LOVELESS, Regional Director of Region 6, United States Fish and Wildlife Service, Department of the Interior; DEFENDANTS

COMPLAINT

I. PROCEEDING

1. This is an action for declaratory relief pursuant to 28 U.S.C., § 2201, and for injunctive relief pursuant to 28 U.S.C., § 2282, for the purpose of determining a question in actual controversy between the parties hereto.

II. JURISDICTION

1. This action is filed pursuant to 28 U.S.C., § 1331, arising under the Constitution, Laws and Treaties of the United States wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs. This action is additionally filed pursuant to 28 U.S.C., § 1337, arising under an Act of Congress regulating commerce.

III. THREE JUDGE COURT

1. This action is filed to determine the applicability of and to enjoin enforcement of the Eagle Protection Act, 16 U.S.C., §§ 668-668b, and to determine the applicability of and to enjoin the enforcement of the Migratory Bird Treaty Act, 16 U.S.C., §§ 703-711, and to determine the applicability of and to enjoin enforcement of the applicable Regulations administered and enforced by the United States Fish and Wildlife Service, Department of the Interior, 12 CFR, Parts 10, 13, 21 and 22. The grounds upon which such Acts and Regulations are sought to be enjoined are that such Acts and Regulations violate Article I, Section 1; Article I, Section 8, Clause 3; Article I, Section 8, Clause 18, of the Constitution of the United States, and the Fifth Amendment and the Tenth Amendment to the Constitution of the United States, all as more particularly set forth herein. Pursuant to the provisions of 28 U.S.C., § 2282, this action is one for which a three judge court is required to be convened as provided by 28 U.S.C., § 2284.

IV. PLAINTIFFS' ALLEGATIONS

1. Plaintiffs L. Douglas Allard and Carol S. Allard, husband and wife, are residents and citizens of the State of Montana. Plaintiffs are the sole owners of a proprietorship operated under the name and style of "Flathead Indian Museum", situate in St. Ignatius, Montana.

Said Plaintiffs are the owners of Indian artifacts composed in part of the feathers of golden eagles, owls and other birds purportedly within the Eagle Protection Act and the Migratory Bird Treaty Act, but which birds were obtained prior to the effective date of Federal protection of such birds pursuant to the Eagle Protection Act and the Migratory Bird Treaty Act.

If such artifacts are permitted to enter into lawful commerce, the fair market value of such artifacts would be in excess of \$10,000; however, if such artifacts are unlawful to trade, barter or sell, such would be rendered valueless.

Said Plaintiffs have in the past exhibited, sold and purchased Indian artifacts in the State of Colorado and reasonably expect to do so in the future. The application of the Eagle Protection Act, Migratory Bird Treaty Act, and the Regulations of the Department of the Interior pertinent thereto, to artifacts composed in part of the feathers of birds purportedly within the protection of the above noted Acts and Regulations, but which birds were obtained prior to the effective date of Federal protection of such birds, restricts the ability of the Plaintiffs to engage in their lawful occupation and destroys a valuable property right of the Plaintiffs, which business has a value in excess of \$10,000.

Plaintiff L. Douglas Allard has been prosecuted within the District of Montana for the sale of Indian artifacts composed in part of the feathers of birds purportedly protected by the Eagle Protection Act. Such action appears on the docket of the United States District Court for the District of Montana as Criminal Action No. CR-75-6-M. Plaintiff has been found guilty in such action and was sentenced to a fine of \$100.00 per count, from which no appeal was lodged.

The application of the Eagle Protection Act and the Migratory Bird Treaty Act and the Regulations issued thereunder by the Department of Interior to the property of the Plaintiffs destroys the value of their property, restricts their ability to engage in their lawful occupation, has subjected L. Douglas Allard to criminal prosecution, and subjects Plaintiffs to the threat of additional prosecution, civil penalty assessments, and significant forfeiture of property to the United States pursuant to the Eagle Protection Act, the Migratory Bird Treaty Act, and the Regulations issued thereunder by the Department of the Interior.

2. Plaintiffs Pierre G. Bovis and Sylvia Bovis, husband and wife, are residents and citizens of the State of New Mexico. Plaintiffs are the sole owners of a proprietorship operated under the name and style of "Winona American Indian Trading Post" situate in Santa Fe, New Mexico.

Said Plaintiffs are the owners of Indian artifacts composed in part of the feathers of golden eagles, hawks,

owls, ospreys, and other birds purportedly within the Eagle Protection Act and the Migratory Bird Treaty Act, but which birds were obtained prior to the effective date of Federal protection of such birds pursuant to the Eagle Protection Act and the Migratory Bird Treaty Act.

If such artifacts are permitted to enter into lawful commerce, the fair market value of such artifacts would be in excess of \$10,000; however, if such artifacts are unlawful to trade, barter or sell, such would be rendered valueless.

Said Plaintiffs have in the past exhibited, sold and purchased Indian artifacts in the State of Colorado and reasonably expect to do in the future. The application of the Eagle Protection Act, Migratory Bird Treaty Act and the Regulations of the Department of the Interior pertinent thereto to artifacts composed in part of the feathers of birds purportedly within the protection of the above noted Acts and Regulations, but which birds were obtained prior to the effective date of Federal protection of such birds, restricts the ability of the Plaintiffs to engage in their lawful occupation and destroys a valuable property right of the Plaintiffs, which business has a value in excess of \$10,000.

Plaintiff Pierre G. Bovis has been prosecuted within the District of Colorado for offering for sale Indian artifacts composed in part of the feathers of birds purportedly protected by the Eagle Protection Act and the Migratory Bird Treaty Act. Such action appears on the docket of this Court as Criminal Actions Nos. 75-CR-63 and 75-CR-66. Plaintiff pleaded *nolo contendere* to the charges in such actions, which pleas were accepted by the Honorable Fred W. Winner, and sentence was entered on April 4, 1975.

The application of the Eagle Protection Act and the Migratory Bird Treaty Act and the Regulations issued thereunder by the Department of Interior to the property of the Plaintiffs destroys the value of their property, restricts their ability to engage in their lawful occupation, has subjected Pierre G. Bovis to criminal prosecution, and subjects Plaintiffs to the threat of additional prosecution, civil penalty assessments, and significant

forfeiture of property to the United States pursuant to the Eagle Protection Act, the Migratory Bird Treaty Act, and the Regulations issued thereunder by the Department of the Interior.

3. Plaintiff Denis C. Eros is a resident and citizen of the State of California. Said Plaintiff is the General Partner of a Limited Partnership operated under the name and style of "American Indian Artifact Catalog Co", situate in Watsonville, California.

Said Plaintiff, through the partnership above noted, publishes price guides reporting current prices of Indian artifacts, which artifacts include those which are composed in part of the feathers of various birds. Said Plaintiff additionally from time to time is employed by various persons, firms and organizations to appraise the value of Indian artifacts, which artifacts include those which are composed in part of the feathers of various birds.

The value of said Plaintiff's general partnership interest and employment as an expert appraiser of Indian artifacts is in excess of \$10,000.

The application of the Eagle Protection Act, the Migratory Bird Treaty Act and the Regulations of the Department of Interior pertinent thereto to artifacts composed in part of the feathers of birds purportedly within the protection of the above noted Acts and Regulations, but which birds were obtained prior to the effective date of Federal protection of such birds, restricts the ability of the Plaintiff to engage in his lawful occupation and makes it impossible for the Plaintiff to provide accurate appraisals of value of the artifacts above described.

4. Plaintiff Alexander G. Kelley is a resident and citizen of the State of New Mexico. Said Plaintiff is an employee of Pierre G. and Sylvia Bovis at the Winona American Indian Trading Post situate in Santa Fe, New Mexico.

Said Plaintiff, acting in his lawful occupation above noted, is of necessity involved with artifacts composed in part of the feathers of birds. The purported application of the Eagle Protection Act, Migratory Bird Treaty Act and the Regulations of the Department of the Interior pertinent thereto to artifacts composed in part of

the feathers of birds purportedly within the protection of the above noted Acts and Regulations, but which birds were obtained prior to the effective date of Federal protection of such birds, restricts the ability of the Plaintiff to engage in his lawful occupation, which employment and occupation is a valuable property right of the Plaintiff having a value in excess of \$10,000.

5. Plaintiff Robert G. Ward is a resident and citizen of the State of New Mexico. Plaintiff is the owner of a proprietorship operated under the name and style of "The Original Trading Post", situate in Santa Fe, New Mexico.

Said Plaintiff is the owner of Indian artifacts composed in part of the feathers of golden eagles, hawks, owls and other birds purportedly within the Eagle Protection Act and the Migratory Bird Treaty Act, but which birds were obtained prior to the effective date of Federal protection of such birds pursuant to the Eagle Protection Act and the Migratory Bird Treaty Act.

If such artifacts are permitted to enter into lawful commerce, the fair market value of such artifacts would be in excess of \$10,000; however, if such artifacts are unlawful to trade, barter or sell, such would be rendered valueless.

Said Plaintiff has in the past exhibited, sold and purchased Indian artifacts in the State of Colorado and reasonably expects to do so in the future. The application of the Eagle Protection Act, Migratory Bird Treaty Act and the Regulations of the Department of the Interior pertinent thereto to artifacts composed in part of the feathers of birds purportedly within the protection of the above noted Acts and Regulations, but which birds were obtained prior to the effective date of Federal protection of such birds, restricts the ability of the Plaintiff to engage in his lawful occupation and destroys a valuable property right of the Plaintiff, which business has a value in excess of \$10,000.

The application of the Eagle Protection Act and the Migratory Bird Treaty Act and the Regulations issued thereunder by the Department of Interior to the property of the Plaintiff destroys the value of his property, restricts his ability to engage in his lawful occupation,

and subjects Plaintiff to the threat of prosecution, civil penalty assessments, and significant forfeiture of property to the United States pursuant to the Eagle Protection Act, the Migratory Bird Treaty Act, and the Regulations issued thereunder by the Department of the Interior.

V. DEFENDANTS

1. The Defendants herein are the following:

A. Kent Frizzell, as Solicitor of the Department of the Interior and as Acting Secretary of the Interior;

B. Nathaniel Reed, as Assistant Secretary of the United States Fish and Wildlife Service, Department of the Interior;

C. Lynn Greenwalt, as Director of the United States Fish and Wildlife Service, Department of the Interior.

Each of the above named Defendants is named in his capacity as an Officer of the United States, and each office is maintained in Washington, District of Columbia.

D. Dr. Charles M. Loveless, as Regional Director for Region 6, United States Fish and Wildlife Service, Department of the Interior.

Region 6 of the United States Fish and Wildlife Service, Department of the Interior, includes the States of Colorado, Montana, North Dakota, South Dakota, Wyoming, Nebraska, Iowa, Utah, Kansas and Missouri.

The Defendant Dr. Charles M. Loveless is a citizen and resident of the State of Colorado.

Each of the foregoing Defendants is charged by law with the enforcement and administration of the Eagle Protection Act and with the Migratory Bird Treaty Act, and each has an interest in this proceeding and the issues herein involved.

2. 16 U.S.C., § 742b, being a statute concerning the reorganization of the Department of the Interior, has established the United States Fish and Wildlife Service, hereinafter referred to as "Service." The Service is charged with the administration and enforcement of the Migratory Bird Treaty Act and the Eagle Protection Act, and the Secretary of the Interior is authorized to adopt suitable regulations with respect to the Migratory Bird Treaty Act and the Eagle Protection Act.

VI. THE MIGRATORY BIRD TREATY ACT, 16 U.S.C., §§ 703-711, AND REGULATIONS THERETO, 12 CFR, PARTS 10, 13 AND 21.

A. *Due Process.*

1. By Act of June 20, 1936, the Migratory Bird Treaty Act, 16 U.S.C., § 703, hereinafter referred to as "Migratory Bird Act", became a law, providing, in part, as follows:

"Taking, killing, or possession migratory birds unlawful.—Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, or any part, nest, or egg of any such birds, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, and the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936."

A copy of the Migratory Bird Treaty Act is attached hereto as Exhibit "A".

Pursuant to the Act of June 1, 1974, Public Law 93-300, said Act has been amended so as to include migratory birds and birds in danger of extinction included in the Treaty between the United States and the Government of Japan, concluded March 4, 1972, which amendment is to take effect on the date on which the President proclaims the exchange of ratifications of the Convention. Said proclamation of the exchange of ratification has not yet taken place.

2. 16 U.S.C., § 707(a), declares any violation of any provision of the Migratory Bird Act or Regulations

adopted pursuant to the Migratory Bird Act constitutes a misdemeanor and is punishable by a fine of not more than \$500 or imprisonment of not more than 6 months, or both. (Pursuant to 16 U.S.C., § 707(b), some specific acts may be punished by a fine of not more than \$2,000, or imprisonment up to two years, or both.)

3. Pursuant to the purported authority granted by the Migratory Bird Act, the Department of the Interior has adopted various Regulations for the enforcement and administration of the Migratory Bird Act, and such Regulations remain in force and effect.

12 CFR, § 10.12, provides, in part:

"'Migratory birds means all birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign country for the protection of migratory birds and the Migratory Bird Treaty Act, 16 U.S.C. 703-711. (For reference purposes only a list of migratory birds by species appears in § 10.13.)"

12 CFR, § 21.2 provides, in part:

"(a) Migratory birds, their parts, nests, or eggs, lawfully acquired prior to the effective date of Federal protection under the Migratory Bird Treaty Act (16 U.S.C. 703-711) may be possessed or transported without a Federal permit, but may not be imported, exported, purchased, sold, bartered, or offered for purchase, sale, trade, or barter, and all shipments of such birds must be marked as provided by 18 U.S.C. 44 and § 14.81 of this subchapter: *Provided*, That no exemption for any statute or regulation shall accrue to any offspring of such birds."

A copy of the Regulations pertinent to the Migratory Bird Treaty Act is attached hereto as Exhibit "B".

4. Plaintiffs allege the Migratory Bird Act and the Regulations referred to above do not apply to their property and business insofar as such property consists of artifacts composed of parts of birds which were obtained prior to the effective date of Federal protection under the Migratory Bird Act, but Plaintiffs have been

informed by the Service that importation, exportation, purchase, sale, barter, or offering for purchase, sale, trade, or barter of any part of any bird included within the Migratory Bird Act is declared by the Service to be unlawful, and any such act by any Plaintiff would be prosecuted. A copy of a Notice from the Service sent to Plaintiff Robert G. Ward evidencing the Service's intention to enforce the terms of the Migratory Bird Treaty Act and the Eagle Protection Act as above stated is attached hereto as Exhibit "C".

5. Plaintiffs allege and contend that if the Migratory Bird Act and the applicable Regulations above noted do apply to the importation, exportation, purchase, sale, barter, or offering or purchase, sale, trade or barter of any part of any bird which was obtained prior to the effective date of the Federal protection of such bird, that such statute and regulations are illegal, unconstitutional, and without the force of law as a deprivation of property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

6. Plaintiffs allege and contend that if the Migratory Bird Act and the applicable Regulations above noted restrict the importation, exportation, purchase, sale, barter, or offering for purchase, sale, trade or barter of any part of any bird included within the Migratory Bird Act, which bird or part thereof was obtained prior to the effective date of the Federal protection of such bird, that such restrictions are arbitrary, capricious and not rationally related to a legitimate regulatory purpose and are beyond the power of Congress to regulate pursuant to Article I, Section 1; Article I, Section 8, Clause 3; and Article I, Section 8, Clause 18, of the Constitution of the United States.

B. *Vagueness.*

1. The Migratory Bird Act, 16 U.S.C., § 703, does not specify any protected birds. Rather, by reference to particular Treaties, various birds are included within the protection of the Migratory Bird Act. The particular Treaties included by reference in the Migratory Bird Act are:

(1) A Convention between the United States and Great Britain, concluded August 16, 1916 (39 Stat. 1702). A copy of such Convention is attached hereto as Exhibit "D".

(2) A Convention between the United States and Mexico, concluded February 7, 1936 (50 Stat. 1311). A copy of such Convention is attached hereto as Exhibit "E".

(3) By Executive Order No. 11629, dated October 28, 1971, the President delegated his authority to the Secretary of State to provide for additional species of birds to be included within the Convention between the United States and Mexico. By an exchange of letters, dated March 10, 1972, between the Ambassadors of the United States and Mexico, 32 separate "families" of birds were added to the Convention between the United States and Mexico. Executive Order No. 11629 is attached hereto as Exhibit "F". The letters of March 10, 1972, are attached hereto as Exhibit "G".

(4) A Convention between the United States and Japan, concluded March 4, 1972. The exchange of these ratifications has not yet been proclaimed, and the addition of this Treaty within the Migratory Bird Act is not yet effective. A copy of such Convention is attached hereto as Exhibit "H".

2. The Convention between the United States and Great Britain provides, in part, for the protection of the following birds:

"2. Migratory Insectivorous Birds:

... and all other perching birds which feed entirely or chiefly on insects."

Being incorporated by reference within the Migratory Bird Act, such language is vague and indefinite, and fails to adequately fix and ascertain a standard of conduct, and fails to convey a sufficiently definite warning as to the proscribed conduct such that men of common intelligence must necessarily guess at its meaning and differ as to its application. For such reason, the Migratory Bird Act and the Regulations issued with respect thereto are unconstitutional as a vague, indefinite and uncertain law,

in violation of the Fifth Amendment to the Constitution of the United States.

3. The Convention between the United States and Mexico specifies protected birds only by reference to the taxonomic classification of "family." The classification system being used and the time at which such classification was made are not specified.

4. Plaintiffs are informed and believe, and upon such information and belief, Plaintiffs allege the only term of precision used to identify a particular bird is the "species" classification. There are existing various taxonomic systems, each of which may present a rational and orderly system of classification; however, a particular species of bird may be classified by one system in one "family" and by another classification system in a different "family." Additionally, within any single taxonomic system the classification of a particular species of bird may be changed from one "family" to another "family" from time to time, and such changes can reasonably expect to continue in the future.

Each of the Plaintiffs, in the collection of Indian artifacts which he owns and in conducting his lawful business of dealing in Indian artifacts, is, of necessity, involved with artifacts that are composed in part of feathers of birds. Due to the vagueness of the identification of protected species of birds included in the Migratory Bird Act and the Regulations issued thereunder, Plaintiffs are unable to determine whether such artifacts fall within the terms and provisions of such Act and Regulations, and are, therefore, unable to reasonably apprise themselves of the lawfulness of their conduct.

5. Incorporating the terms of the various Treaties by reference, the Migratory Bird Act and the Regulations issued thereunder have left uncertain and indefinite the species of birds protected by the Act. The specific identification of birds has not been made, the system of classification being utilized has not been stated, and there are existing recognized systems of classification which conflict with respect to the family name of any particular species of bird, and within any existing classification system there have been and reasonably will continue to be changes of a particular species of bird from one family

to another. Such make the Migratory Bird Act and the Regulations issued thereunder vague and indefinite, fail to reasonably apprise individuals of common intelligence of the nature of the proscribed conduct, leaving individuals of necessity to guess at its meaning and to differ as to its application. For such reasons, the Migratory Bird Act and the Regulations issued thereunder are a vague, indefinite and uncertain law, in violation of the Fifth Amendment to the Constitution of the United States.

C. *Unlawful Delegation.*

1. The Convention between the United States and Mexico provides, in part, for the protection of the following birds:

"Others which the Presidents of the United States of America and the United Mexican States may determine by common agreement."

2. By Executive Order No. 11629, dated October 28, 1971, the President of the United States did purport to delegate to the Secretary of State his authority to agree with the President of Mexico for the inclusion of additional species of birds within the protection of the Convention. By letter of March 10, 1972, the United States Ambassador to Mexico, Mr. Robert H. McBride, did agree to the inclusion of 32 additional families of birds within the Convention.

3. Incorporated by reference within the Migratory Bird Act, the addition of birds within the Convention by letter of March 10, 1972, is an unlawful delegation of Legislative power to the Executive. The delegation sets forth no Legislative policy or objective, and sets forth no standards for directing the actions of the Executive. Such delegation of Legislative authority is equally granted to the President of the United Mexican States, for it is only by *common agreement* that additional birds have been included within the Convention between the United States and Mexico, and by reference have been included within the Migratory Bird Act. The determination of the President of the United Mexican States as to the inclusion of additional birds within the Conven-

tion has not been nor could it be governed by any Legislative standards intended to have been set forth by the Congress of the United States.

4. Such incorporation of additional families of birds by reference within the Migratory Bird Act is an unlawful delegation of Legislative power to the Executive and to a foreign sovereign, in violation of Article I, Section 1, of the Constitution of the United States.

5. Executive Order No. 11629, dated October 28, 1971, purports to be a delegation from the President of the United States to the Secretary of State to provide, by common agreement with the President of Mexico, for additional species of birds to be protected by the Convention between the United States and Mexico.

6. Upon information and belief, Plaintiffs allege the Secretary of State did not agree with the President of Mexico for the inclusion of different birds within the Convention, but, rather, Mr. Robert H. McBride, the American Ambassador to Mexico, did, by letter dated March 10, 1972, provide for the inclusion of additional families of birds within the Convention.

7. Pursuant to Section 2 of Executive Order No. 11629, in providing for additional birds to be brought within the protection of the Convention, the Secretary of State was directed to consult with the Secretary of the Interior. Upon information and belief, Plaintiffs allege the consultation between the Secretary of State and the Secretary of Interior, mandated by Section 2 of Executive Order No. 11629, did not occur.

8. Pursuant to Section 1 of Executive Order No. 11629 in providing for additional birds to be brought within the protection of the Convention, the Secretary of State was directed to provide for such birds by *species*. The letter of March 10, 1972, does not provide for the inclusion of additional birds by species, but, rather, utilizes the taxonomic classification of "family."

9. Plaintiffs allege that for such reasons, the letter of March 10, 1972, is void and of no effect, and any birds intended to have been thereby included within the Convention between the United States and Mexico are not so included. Any "family" of birds set forth in the

letter of March 10, 1972, is not incorporated by reference within the Migratory Bird Act, and is not, therefore, within any Regulation based thereon, and all such Regulations based upon such letter are void and of not effect as such Regulations are not based upon a lawful Legislative Act, and thus constitute a Legislative act by the Executive branch of the Government, in violation of Article I, Section 1, of the Constitution of the United States.

VII. EAGLE PROTECTION ACT, 16 U.S.C., SEC. 668; 12 CFR, PART 22

1. By Amendment of October 23, 1972, being an Act relating to the protection of bald eagles and golden eagles, 16 U.S.C., § 668, became law and remains in force and effect, and provides, in part, as follows:

"Bald eagles—Possession, transportation or sale of birds, nests, or eggs prohibited—Penalty.—(a) Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as hereinafter provided, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this Act [16 USCS §§ 668-668d], shall be fined not more than \$5,000 or imprisoned not more than one year or both; Provided, That in the case of a second or subsequent conviction for a violation of this section committed after the date of the enactment of this proviso [Oct. 23, 1972], such person shall be fined not more than \$10,000 or imprisoned not more than two years, or both; . . . Provided further, That nothing herein shall be construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest or egg thereof, lawfully

taken prior to June 8, 1940, and that nothing herein shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition of this Act [16 USCS §§ 668-668a] of the provisions relating to preservation of the golden eagle."

A copy of the Eagle Protection Act is attached hereto as Exhibit "I".

2. Pursuant to 16 U.S.C., § 668a, the Secretary of the Interior is authorized to provide for regulations for the administration and enforcement of the Eagle Protection Act, and a violation of any permit or regulation can result in a fine of not more than \$5,000, or imprisonment of not more than one year, or both, a civil penalty to be assessed by the Secretary of the Interior of not more than \$5,000 for each violation, and 16 U.S.C., § 668b(b), provides for forfeiture of various properties to the United States.

3. Pursuant to such authority, the Secretary of the Interior has enacted various Regulations, which Regulations remain in force and effect.

12 CFR, §§ 22.12, provides, in part, as follows:

"No person shall sell, purchase, barter, trade, or offer for sale, purchase, barter, or trade, export or import, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle (*Aquila chrysaetos*) or the parts, nests, or eggs of such birds, and no permit will be issued to authorize such acts."

A copy of the Regulations pertinent to the Eagle Protection Act is attached hereto as Exhibit "J".

4. Plaintiffs allege and contend the Eagle Protection Act and the Regulations issued thereunder do not apply to artifacts composed in part of feathers or other parts of golden or bald eagles which were obtained prior to the effective date of Federal protection for such birds pursuant to the Eagle Protection Act. Plaintiffs have been informed by the Service, however, the sale, purchase, barter, trade, or offering for sale, purchase, barter or

offering for sale, purchase, barter or trade, export or import of any artifact composed of the feathers or other parts of a golden or bald eagle, regardless of when such birds were obtained, has been declared by the Service to be unlawful, and that any such act by any of the Plaintiffs would be prosecuted. (See Exhibit "C")

5. Plaintiffs allege and contend that if the Eagle Protection Act does prohibit the purchasing, selling, bartering, trading, or offering for sale, purchase, barter, or trade, export or import of artifacts which are composed in part of feathers or other parts of bald or golden eagles, which birds were obtained prior to the effective date of Federal protection for such birds, then such Law and Regulations issued thereunder are illegal, unconstitutional, and without the force of law as a deprivation of property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States.

6. Plaintiffs allege and contend that if the Eagle Protection Act and the Regulations issued thereunder do restrict the sale, purchase, barter, trade, or offering for sale, purchase, barter, or trade, export or import of any artifact composed in part of any bald eagle or golden eagle, which birds were obtained prior to the effective date of the Federal protection of such birds, then such Act and Regulations are arbitrary, capricious, and not rationally related to a legitimate regulatory purpose, and are beyond the power of Congress to regulate pursuant to Article I, Section 1; Article I, Section 8, Clause 3; and Article I, Section 8, Clause 18, of the Constitution of the United States.

7. 16 U.S.C., § 668, does not identify the type of eagles protected by species. The statute uses only the common name, "golden eagle." Upon information and belief, Plaintiffs allege that there are at least five recognized subspecies of the species of "*Aquila Chrysaetos*", only one of which sub-species is found in North America. Plaintiffs allege that 16 U.S.C., § 668, applies only to the subspecies of the golden eagle native to North America, *Aquila Chrysaetos Canadensis*.

Upon information and belief, Plaintiffs allege that the other sub-species of *Aquila Chrysaetos* are known by

other common names throughout the world where they are found, such that the use of the common name "golden eagle" in 16 U.S.C., § 668, is vague and indefinite, and fails to reasonably apprise individuals of common intelligence of the nature of the proscribed conduct, leaving individuals of necessity to guess at its meaning and to differ as to its application. For such reason, the Eagle Protection Act and the Regulations issued thereunder are a vague, indefinite and uncertain law, in violation of the Fifth Amendment to the Constitution of the United States.

8. The Eagle Protection Act, 16 U.S.C., § 668, and the matters regulated therein are beyond the authority of the Congress of the United States to legislate and is an exercise of power reserved to the States, in violation of the Tenth Amendment to the Constitution of the United States.

WHEREFORE, Plaintiffs pray as follows:

A. This Court declare the Migratory Bird Treaty Act, 16 U.S.C., §§ 703, et seq.; the Eagle Protection Act, 16 U.S.C., §§ 668, et seq.; and the Regulations of the Department of the Interior issued thereunder, being 50 CFR, Parts 10, 13, 21 and 22, are inapplicable to birds or parts thereof which were obtained prior to the effective date of Federal protection of such birds.

B. That if the Migratory Bird Treaty Act, the Eagle Protection Act, and the Regulations issued thereunder, above noted, do apply to birds or parts thereof obtained prior to the effective date of Federal protection of such birds, this Court declare such Acts and Regulations above noted are void, unconstitutional, ineffective and without the force of law as a deprivation of property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and as an arbitrary and capricious restriction, not rationally related to a legitimate regulatory purpose in violation of Article I, Section 1, of the Constitution of the United States.

C. This Court declare the Migratory Bird Treaty Act and the Regulations issued thereunder are vague and

indefinite for failing to sufficiently identify the birds protected thereunder, in violation of the Fifth Amendment to the Constitution of the United States.

D. This Court declare that certain letter dated March 10, 1972, between the United States of America and the United Mexican States providing for additional birds to be added to the protection of the Convention between the United States and Mexico, is void and of no effect as an unlawful delegation of Legislative power, in violation of Article I, Section 1, of the Constitution of the United States, and is void and of no effect for failing to comply with those certain terms and conditions specified in Executive Order No. 11629 dated October 28, 1971.

E. This Court declare that the Eagle Protection Act, 16 U.S.C. §§ 668, et seq., and the Regulations issued thereunder, unconstitutional as an exercise of Legislative power by the Congress of the United States, which power is reserved to the States, in violation of the Tenth Amendment to the Constitution of the United States; that the Eagle Protection Act and the Regulations issued thereunder are vague and indefinite for the failure to sufficiently identify the birds protected thereunder, in violation of the Fifth Amendment to the Constitution of the United States, or that such Act and the Regulations issued thereunder apply only to the sub-species of "golden eagle" native to North America, being "*Aquila Chrysaetos Canadensis*."

F. This Court declare, for the above reasons, that the Plaintiffs are not required to comply with the terms and provisions of the Acts and Regulations above noted insofar as such Acts and Regulations cannot restrict the rights of the Plaintiffs to acquire, keep and dispose by trade, sale or barter, artifacts composed in part of the feathers or other parts of birds protected by the above noted Acts and Regulations but which birds were obtained prior to the effective date of the Federal protection of such birds.

G. The Defendants and each of them, their agents and servants, be permanently restrained and enjoined by this Court from exercising any of the powers, rights or duties respecting the enforcement of the Migratory Bird

Treaty Act, the Eagle Protection Act, and the Regulations issued thereunder, against the Plaintiffs insofar as such are applied to the property of the Plaintiffs consisting in part of the birds or parts of birds obtained prior to the effective date of Federal protection of such birds.

H. For costs, and for such other and further relief as the Court may deem just and equitable.

DATED this 19th day of September, 1975.

/s/ Akolt, Dick & Akolt
AKOLT, DICK & AKOLT

/s/ John P. Akolt, III
JOHN P. AKOLT, III
Attorneys for Plaintiffs
1510 Lincoln Center Building
1660 Lincoln Street
Denver, Colorado 80203
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Addresses of Plaintiffs:

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Mr. and Mrs. Pierre Bovis
P.O. Box 324
Santa Fe, New Mexico 87501

Mr. Denis C. Eros
Box 1005
Watsonville, California 95076

Mr. Alexander G. Kelley
306 Rio Vista Place
Santa Fe, New Mexico 87501

Mr. Robert G. Ward
Box 179
Santa Fe, New Mexico 87501

EXHIBITS

The following exhibits have been omitted:

- A. The Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*
- B. 50 C.F.R. 10.1-10.22; 21.1-21.46.
- D. Convention between United States and Great Britain, signed August 18, 1916.
- E. Convention between United States and Mexico, signed February 7, 1936.
- F. Executive Order No. 11629, signed October 26, 1971.
- G. Agreement supplementing the convention between the United States and Mexico of February 7, 1936. The agreement entered into force March 10, 1972.
- H. Convention between United States and Japan, signed March 4, 1972.
- I. The Eagle Protection Act, 16 U.S.C. 668 *et seq.*
- J. 50 C.F.R. 22.1-22.32.

Exhibit C has been reproduced.

EXHIBIT C

DEPARTMENT OF THE INTERIOR
BUREAU OF SPORT FISHERIES AND WILDLIFE

SPECIAL AGENT
U.S. PARKS & WILDLIFE SERVICE
2721 N. Central Ave.
Phoenix, Arizona 85004

CERTIFIED
No. 005117
MAIL

[Canceled—Apr. 16, 1975]

POSTAGE AND FEES PAID (USPS)

[SEAL]

U.S. DEPARTMENT OF THE INTERIOR

Bob Ward Indian Traders
201 W. San Francisco
Santa Fe, NM 87501

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
Division of Law Enforcement
2721 N. Central
Phoenix, Arizona 85004

ALL INDIAN ARTS AND CRAFTS DEALERS:

The following excerpts from the United States Code and Code of Federal Regulations relating to endangered species of wildlife are cited for your information:

16 USC 1532. Definitions

For the purpose of this chapter—

(4) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range. . .

(5) The term “fish and wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. . .

16 USC 1538. Prohibited acts—Generally

(a) (1) Except as provided in sections 1535(g) (2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

- (A) import any such species into, or export any such species from the United States;
- (B) take any such species within the United States or the territorial sea of the United States;
- (C) take any such species upon the high seas;
- (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);
- (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;
- (F) sell or offer for sale in interstate or foreign commerce any such species; or
- (G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

50 CFR 17.11

Based on the best scientific and commercial data available to him and after consultation, in cooperation with

the Secretary of State, with the foreign country or countries in which such wildlife are normally found and, to the extent practicable, with interested Federal agencies, the Secretary has determined that the species or subspecies of wildlife listed below are threatened with worldwide extinction due to one or more of the factors listed in Endangered Species Act of 1973,

Common name	Scientific name	Where found
Reptiles:		
Turtle, Hawksbill—	<i>Eretmochelys imbricata</i> —	
	Tropical seas.	

MAMMALS:

Whale, Sperm—*Physeter catodon*—Oceanic

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
Division of Law Enforcement
2721 N. Central
Phoenix, Arizona 85004

ALL INDIAN ARTS AND CRAFTS DEALERS:

The following excerpts from the United States Code and Code of Federal Regulations relating to migratory birds and their parts are cited for your information:

16 USC 703

Unless and except as permitted by regulations made as hereinafter provided in sections 703-711 of this title, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import cause to be shipped, exported or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or received for shipment, transportation, carriage, or export, any migratory bird, or any part, nest, or egg of any such birds, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), and the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936. . .

50 CFR 21.2

(a) Migratory birds, their parts, nests, or eggs, lawfully acquired prior to the effective date of Federal protection under the Migratory Bird Treaty Act (16 USC 703-711) may be possessed or transported without a Federal permit, but may not be imported, exported, purchased, sold, bartered, or offered for purchase, sale, trade or barter. . .

16 USC 668

(a) Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in sections 668 to 668d of this title, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle commonly known as the American Eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to sections 668 to 668d of this title, shall be fined not more than \$5,000 or imprisoned not more than one year or both. . .

50 CFR 22.2

(a) Bald eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to October 24, 1962, may be possessed, or transported without a Federal permit, but may not be imported, exported, purchased, sold traded, bartered, or offered for purchase, sale, trade or barter. . .

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action 75-W-1000

L. DOUGLAS ALLARD and CAROL S. ALLARD; PIERRE G. BOVIS and SYLVIA BOVIS; DENIS C. EROS; ALEXANDER G. KELLEY; and ROBERT G. WARD; PLAINTIFFS

v.

KENT FRIZZELL, Solicitor of the Department of the Interior and Acting Secretary of the Interior; NATHANIEL REED, Assistant Secretary of the United States Fish and Wildlife Service, Department of the Interior; LYNN GREENWALT, Director of the United States Fish and Wildlife Service, Department of the Interior; and DR. CHARLES M. LOVELESS, Regional Director of Region 6, United States Fish and Wildlife Service, Department of the Interior; DEFENDANTS

ANSWER

Defendants, by their attorney, answer the plaintiffs' complaint as follows:

1. Parts I, II and III of the complaint are statements of law requiring no response, except that, as to Part II, the defendants lack information to form a belief as to the truthfulness of the allegation that the amount in controversy exceeds \$10,000.

2. Defendants lack information upon which to plead as to Part IV, except that defendants admit the fifth paragraph under section 1 and the fifth paragraph under section 2 and deny the allegations that the statutes and regulations cited destroy the value of plaintiffs' property and restrict their right to engage in lawful occupations.

3. Part V.1 is admitted, except that Thomas S. Kleppe is Secretary of the Interior; Nathaniel Reed is Assistant Secretary for Fish and Wildlife and Parks; and Harvey Willoughby is Acting Director of Region 6, Fish and Wildlife Service. Part V.2 is a statement of law for which no response is required.

4. Part VI.A.1-3 are statements of law for which no response is required. Part VI.A.5 and 6 are denied, and Part VI.A.4 is admitted, except defendants deny the allegation that the statutes and regulations are inapplicable to the plaintiffs.

5. Part VI.B is denied except for statements of law contained therein for which no response is required.

6. Part VI.C is denied except for statements of law for which no response is required. Part VI.C.6 is denied on the grounds that the American Ambassador has been duly delegated by the Secretary of State to include additional bird families in the Convention.

7. Part VII is denied other than as to statements of law for which no response is required, except that paragraph 4 is admitted except for the first sentence, which is denied, and that the third sentence in paragraph 7 is admitted.

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

Plaintiffs Eros, Kelley and Allard lack standing to sue.

Respectfully submitted,

JAMES L. TREECE
United States Attorney

By: /s/ James W. Winchester
JAMES W. WINCHESTER
Assistant U.S. Attorney
323 United States Courthouse
1929 Stout Street
Denver, Colorado 80202
Telephone (303) 837-2065
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER was served, addressed, to Akolt, Dick & Akolt, Attorneys for Plaintiffs, 1510 Lincoln Center Building, 1660 Lincoln Street, Denver, Colorado 80203, and deposited, postage prepaid, in the United States mail this 24th day of November, 1975.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 75-1000

ALLARD, ET AL., PLAINTIFFS

v.

KLEPPE, ET AL., DEFENDANTS

DEFENDANTS' FIRST INTERROGATORIES
TO PLAINTIFFS

In accordance with Rule 33 of the Federal Rules of Civil Procedure, the United States of America as defendant, requests plaintiffs to answer under oath, the following Interrogatories.

These Interrogatories are continuing Interrogatories. If at any time after service of the answers, and prior to the trial of this action, plaintiffs obtain additional information responsive to any of these Interrogatories which they are required to provide pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, they shall, within 30 days, and in no event later than five days before trial, serve personally upon defendants' counsel named below supplemental sworn answers setting forth such additional information.

DEFINITIONS

1. "Plaintiffs" means each individual plaintiff in this matter. Where the interrogatory calls for responses which will be different for each plaintiff, set forth each response separately, together with the identity of the plaintiff making that response.

2. "Documents" includes correspondence, internal memoranda, summaries, minutes of meetings, notes, receipts, checks, announcements, and/or writings of any sort, made by or in possession of the plaintiffs.

INTERROGATORIES

1. With respect to paragraph IV of the Complaint:

(a) Identify and describe those artifacts which plaintiffs own which are composed of feathers from birds which plaintiffs believe may be subject to the Eagle Protection Act and the Migratory Bird Treaty Act.

(b) Identify, for each of the artifacts referred to in paragraph 1(a) above, by bird species, those feathers which plaintiffs believe may be subject to the Eagle Protection Act and the Migratory Bird Treaty Act.

(c) With reference to the allegation in the complaint "... but which birds were obtained prior to the effective date of Federal protection of such birds pursuant to the Eagle Protection Act and the Migratory Bird Treaty Act," identify with specificity the dates the "birds" were obtained and the method by which plaintiffs have ascertained those dates.

(d) Describe the basis upon which plaintiffs have ascertained the value of their artifacts to be in excess of \$10,000, and the basis for plaintiffs' contention that such artifacts have no value if it is unlawful to trade or sell them.

2. With respect to paragraph VI. 2:

(a) Identify and describe those artifacts plaintiffs own which are composed of feathers from birds which plaintiffs believe may be subject to the Eagle Protection Act and the Migratory Bird Treaty Act.

(b) Identify, for each of the artifacts referred to in paragraph 2(a) above, by bird species, those feathers plaintiffs believe may be subject to the Eagle Protection Act and the Migratory Bird Treaty Act.

(c) With reference to the allegation "... but which birds were obtained prior to the effective date of Federal protection of such birds pursuant to the Eagle Protection Act and the Migratory Bird Treaty Act," state with specificity the dates the "birds" were obtained and the method by which plaintiffs have ascertained those dates.

(d) Describe the basis upon which plaintiffs have ascertained the value of their artifacts to be in excess of

\$10,000, and the basis for plaintiffs' contention that such artifacts have no value of it is unlawful to trade or sell them.

3. With respect to paragraph IV. 3, describe the manner in which the Eagle Protection Act and the Migratory Bird Treaty Act restrict the ability of Denis C. Eros to engage in his lawful occupation and make it "impossible . . . to provide accurate appraisals of value of the artifacts above described" and the method used by the plaintiff Eros to calculate the injury to his business resulting from the statutes at issue.

4. With respect to paragraph IV. 4, specify how the Eagle Protection Act, the Migratory Bird Treaty Act, and the Regulations of the Department of the Interior restrict the ability of the plaintiff Kelley to engage in his "lawful occupation", and set forth the amount of damage to Kelley alleged to be the result of the aforesaid statutes and regulations, together with the method used to compute the damage asserted.

5. With respect to paragraph IV. 5:

(a) Identify those artifacts which plaintiffs own which are composed of feathers from birds which plaintiffs believe may be subject to the Eagle Protection Act and the Migratory Bird Treaty Act.

(b) Identify, for each of the artifacts referred to in paragraph 5(a) above, by bird species, those feathers which plaintiffs believe may be subject to the Eagle Protection Act and the Migratory Bird Treaty Act.

(c) With reference to the allegation ". . . but which birds were obtained prior to the effective date of Federal protection of such birds pursuant to the Eagle Protection Act and the Migratory Bird Treaty Act," identify with specificity the dates the "birds" were obtained and the method by which plaintiffs have ascertained those dates.

6. With respect to paragraph VI.A. 1, state whether plaintiffs:

(a) agree that the Act of June 20, 1936, was an amendment to the original Migratory Bird Treaty Act of July 3, 1918, 40 Stat. 755.

(b) dispute that the Supreme Court upheld the constitutionality of the original Act in *Missouri v. Holland*, 252 U.S. 416 (1920).

(c) claim the Act, as amended, is void on the basis of grounds other than those decided in *Holland* and state what those grounds are.

7. With respect to paragraph VI.A. 5, set forth in detail the factual basis, legal contentions, and legal authorities relied upon by the plaintiffs in asserting that the Migratory Bird Treaty Act and the Regulations are "illegal, unconstitutional, and without force of law as a deprivation of property without due process of law. . . ."

8. With respect to paragraph VI.B. 2, describe those feathers which are in plaintiffs' possession as artifacts or parts of artifacts previously identified by plaintiffs' answers to these interrogatories and which plaintiffs contend may be included, but are not specifically identified, by Article I, paragraph 2 of the United States-British Convention attached as Exhibit D to plaintiffs' complaint.

9. With respect to paragraph VI.B. 4, identify those species of birds which plaintiffs allege they are unsure are included in the Convention between the United States and Mexico (Exhibit E to plaintiffs' complaint) and state for each such species which artifacts, identified previously by plaintiffs in their answers to these interrogatories, contain feathers of that species.

In addition, state the factual basis upon which plaintiffs assert they are unsure the species identified in response to this interrogatory 9 are within the scope of the aforesaid Convention.

10. With respect to paragraph VI.B. 5, identify the "existing recognized systems of classification which conflict with respect to the family name of any particular species of birds. . . ."

11. With respect to paragraphs VI.C. 8 and 9, state in what way plaintiffs contend that the use of "families" rather than "species" has prejudiced them or made less clear the identification of birds covered by the Migratory Bird Treaty Act.

12. With respect to paragraph VII.1, state whether plaintiffs agree that the Amendment of October 23, 1972,

is a modification of the original Bald Eagle Protection Act (Acts of June, 1940 and October 24, 1962).

13. State the basis for plaintiffs' contention in paragraph VII. 4 that the Act and regulations thereunder do not apply to artifacts containing feathers of bald or golden eagles which were obtained prior to the effective date of the Act.

14. State separately the basis for plaintiffs' contention in paragraph VII.6 that (a) the Act, and (b) the regulations, are "arbitrary, capricious, and not rationally related to a legitimate regulatory purpose"

15. With respect to paragraph VII. 7, the plaintiffs assert that the name "golden eagle" is vague because it encompasses all "five recognized sub-species". State the basis for plaintiffs' contention that the term "golden eagle" is vague and "fails to apprise individuals of common intelligence of the nature of the proscribed conduct. . . ."

16. Identify and describe (or, if you will do so, attach copies to your answer) all documents in plaintiffs' possession which refer or relate in whole or in part to the acquisition of the artifacts previously identified in your answers to these interrogatories or to the sources from which plaintiffs acquired these artifacts.

17. For each artifact identified previously in these answers, state and give the basis for the statement, how the feathers of those birds believed by plaintiffs to be possibly within the Bald Eagle Protection and the Migratory Bird Treaty Act were obtained.

18. Have plaintiffs ever killed birds believed by them to possibly be within the scope of the Migratory Bird Treaty Act or the Bald Eagle Protection Act, and if the answer is affirmative, state the date and circumstances of each killing and the reason why the bird was killed.

19. Describe how the Bald Eagle Protection Act and the Migratory Bird Treaty Act have interfered with plaintiffs' enjoyment and use of their Indian artifacts, excluding the interference asserted by plaintiffs with their business.

20. Identify by name, business address and telephone number all expert witnesses plaintiffs intend to call at trial, and provide the following for each:

- (a) the subject matter of the testimony
- (b) the substance of the opinion and facts which will comprise the testimony
- (c) a summary of the grounds for the opinion

JAMES L. TREECE
United States Attorney

/s/ Gary M. Jackson
GARY M. JACKSON

/s/ James W. Winchester
JAMES W. WINCHESTER
Assistant U.S. Attorneys
323 U.S. Court House
Drawer 3615
Denver, Colorado 80202
837-2065
Attorneys for Defendants

ADDENDA

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 76-1251

L. DOUGLAS ALLARD and CAROL S. ALLARD; PIERRE G. BOVIS and SYLVIA BOVIS; DENIS C. EROS; ALEXANDER G. KELLEY; and ROBERT G. WARD;
PLAINTIFFS-APPELLEES

vs.

KENT FRIZZELL, Solicitor of the Department of the Interior and Acting Secretary of the Interior; NATHANIEL REED, Assistant Secretary of the United States Fish and Wildlife Service, Department of the Interior; LYNN GREENWALT, Director of the United States Fish and Wildlife Service, Department of the Interior; and DR. CHARLES M. LOVELESS, Regional Director of Region 6, United States Fish and Wildlife Service, Department of the Interior; DEFENDANTS-APPELLEES

NATIONAL AUDUBON SOCIETY, INC.,
950 Third Avenue, New York
New York 10022, (212) 832-3200

ENVIRONMENTAL DEFENSE FUND, INC.,
162 Old Town Road, East Setauket,
New York 11733, (516) 751-5191,
MOVANTS-APPELLANTS

AFFIDAVIT

AFFIDAVIT OF DR. ALAN H. BRUSH

DR. ALLAN H. BRUSH, being duly sworn, deposes and says:

1. I am a professor in the Department of Zoology, University of Connecticut, located in Storrs, Connecticut, and am an expert in comparative biochemistry with par-

ticular regard to feather proteins, molecular evolution, and systematics.

2. I received my doctorate degree from the University of California, Los Angeles in 1964 and has been honored with fellowships to Cornell University, UCLA, and the University of California, Berkeley. I am a member of the following professional societies: American Association for the Advancement of Science, American Ornithologists' Union (Fellow), Cooper Ornithological Society, American Physiological Society, American Society of Zoologists, and the British Ornithologists' Union. I have authored or co-authored nearly fifty books, articles for scientific journals, monographs, and reviews in the area of my expertise. I have also been a recipient of the Marcia Brady Award of the American Ornithologists' Union and the Frances F. Roberts Award of the Cooper Ornithological Society.

3. My laboratory at the University of Connecticut, which receives continuous support from the National Science Foundation, is one of the only laboratories in the world studying the protein and pigment content of bird feathers. I have devoted the past three or four years to the study of the protein (keratin) content of feathers and have also worked for ten years with other aspects of feathers, including pigmentation and structure.

4. In my studies, I have necessarily been involved with the task of trying to date bird feathers as part of my research in keratin and carotenoids.

5. I can detect no change in the composition of fresh feather material and museum material removed from the skin of birds known, by museum records, to be over 100 years of age. In other words, I know of no good test for ascertaining whether a given feather is a century old or recently taken.

6. Decomposition in bird feathers is such a gradual process that existing scientific methods can detect no change for purposes of ascribing any particular age to feathers. Nor have scientists been able to detect morphological, color or pattern changes in feathers found in archeological digs known to be from the Seventh and Eighth Century A.D. as part of basket-weaver cultures existing in an area now known as the southwestern United States.

7. I have concluded that there is no available methodology of existing science that would permit the distinguishing of a fresh feather from an old feather to a time certain.

/s/ Alan H. Brush
ALAN H. BRUSH, PH.D.

Subscribed and sworn to before me, a Notary Public for the State of Connecticut, this 10th day of May, 1976.

/s/ Donna A. Jacob
Notary Public

My Commission expires: May 31st, 1978.

I, Howard K. Phillips, Clerk of the United States Court of Appeals for the Tenth Judicial Circuit and authorized custodian of the records of the Court, hereby certify that the foregoing four (4) pages constitute a full and true copy of the Affidavit of Dr. Alan H. Brush filed in appeal No. 76-1251, entitled L. Douglas Allard, et al. v. Kent Frizzell, et al., National Audubon Society, Inc., et al., Appellants, as the same as exists in the records in possession of the Clerk.

Witness my hand and seal of the Court in Denver, Colorado, this first day of October, 1976.

[SEAL]

/s/ Howard K. Phillips
HOWARD K. PHILLIPS
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 75-W-1000

L. DOUGLAS ALLARD and CAROL S. ALLARD; PIERRE G. BOVIS and SYLVIA BOVIS; DENIS C. EROS; ALEXANDER G. KELLEY; and ROBERT G. WARD; PLAINTIFFS,

vs.

THOMAS S. KLEPPE, Secretary of the Interior; NATHANIEL REED, Assistant Secretary of the United States Fish and Wildlife Service, Department of the Interior; LYNN GREENWALT, Director of the United States Fish and Wildlife Service, Department of the Interior; and HARVEY WILLOUGHBY, Regional Director of Region 6, United States Fish and Wildlife Service, Department of the Interior; DEFENDANTS.

AFFIDAVIT

AFFIDAVIT OF LOREN KEITH PARCHER

LOREN KEITH PARCHER, being duly sworn, deposes and says:

1. I am the Deputy Chief of the Division of Law Enforcement, United States Fish and Wildlife Service, of the Department of the Interior, with offices in Washington, D.C. Pursuant to statutory authority and delegations of authority of the Department of the Interior, the Division of Law Enforcement is responsible for enforcing federal conservation laws for the protection and management of wild mammals, birds, fishes, amphibians, and reptiles, including enforcement of the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.* and the Eagle Protection Act, 16 U.S.C. §§ 668-668c.

2. Pursuant to the provisions of the Migratory Bird Treaty Act, the Eagle Protection Act and corresponding regulations under 50 C.F.R. §§ 21.2 and 22.2, the Fish and Wildlife Service has prosecuted persons involved in the marketing of feathers of protected birds, regardless of the date of acquisition or taking of such fathers.

3. Feathers taken or acquired before the effective date of the subject Acts and conventions cannot be the objects

of a registration system similar to that enacted to carry out the statutory exemptions for pre-Act marine mammals and their products under the Marine Mammal Protection Act, 16 U.S.C. § 1372(e), because:

- a) The Migratory Bird Treaty Act, Eagle Protection Act, and regulations thereunder do not exempt pre-Act wildlife protected thereunder from prohibitions of the Act, as does the Marine Mammal Protection Act, except for possession and transportation;
- b) The Eagle Protection Act and existing regulations under the Migratory Bird Treaty Act mandate that the Department of the Interior allow only possession and transportation of pre-Act bird feathers;
- c) Upon information and belief, bird feathers cannot be dated so as to positively prove that a given feather was taken or acquired before federal protection was extended to certain birds under the subject Acts. This problem is compounded for artifacts that are composed of numerous, individual feathers, any one of which could as easily appear to be post-Act as pre-Act;
- d) Given the morphology of feathers, they would be difficult to indelibly mark as permissible items for sale. Marking of each feather could involve damage to the feather or the structure of the Indian artifact itself. Control of permitted feathers attached to artifacts would be a corresponding problem because illegal feathers could be mixed with permitted feathers which are attached to an artifact, with little chance of detection.

/s/ Loren Keith Parcher
LOREN KEITH PARCHER

Subscribed and sworn to here before me, a Notary Public for the District of Columbia, this [illegible] day of September, 1976.

/s/ [Illegible]
Notary Public

My Commission expires: [Illegible]

ANSWER TO INTERROGATORY NO. 1(a)-(d)

NAME OF PLAINTIFF: Dennis C. Eros

1-(a), (b) The description of Plaintiffs' artifacts which Plaintiffs believe may be subject to the Eagle Protection Act and Migratory Bird Treaty Act identifying each, where known, the type of bird feathers are as follows:

1. Artifact: Hopi Kachina—Flicker feathers (?)
Age: early 1940's Value: \$300-\$400
2. Artifact: Hopi Kachina—Feather type unknown
Age: early 1940's Value: \$400-\$600
3. Artifact: Hopi Kachina—Feather type unknown
Age: 1930's Value: \$400-\$600
4. Artifact: Hopi Kachina—Feather type unknown
Age: 1920's Value: \$400-\$700
5. Artifact: Hopi Kachina—Feather type unknown
Age: 1950's Value: \$150-\$250
6. Artifact: Hopi Kachina—Feather type unknown
Age: early 1940's Value: \$200-\$300
7. Artifact: Zuni Kachina—Flicker feather (?)
Age: 1920 Value: \$200-\$300
8. Artifact: Hopi Kachina—Feather type unknown
Age: 1900-1910 Value: \$700-\$1,000
9. Artifact: Hopi Kachina—Parrot Feathers
Age: 1890-1900 Value: \$700-\$1,000
- 9a. Artifact: Basket—Quail topknots
Age: 1920-1930 Value: \$300-\$400
10. Artifact: 6 Sioux arrows—Eagle feathers (?)
Age: 1939 Value: \$50-\$75 each

1-(c) Upon the Plaintiffs' belief, the dates the "birds" were obtained were prior to the estimated age of the artifact as stated. The method whereby the Plaintiffs as-

certained those dates for the age of the artifacts are as follows:

Expert Appraisal. Patina and style of manufacture.

1-(d) If such artifacts listed herein are unlawful to trade, sell or barter, Plaintiffs are unable to ascertain how such artifacts can have any value. The basis upon which the Plaintiffs have estimated the value of their artifacts is as follows:

Professional appraisal, similarity of sales, scarcity and visual appeal. Guides for pricing attached.—
See attached answer.

16. Documents in Plaintiffs' possession relating to the acquisition of the artifacts identified herein are attached hereto or described as follows:

None.

17. Except as stated herein, Plaintiff is without information, knowledge or sources of information or knowledge to determine specifically how the feathers included within the artifacts were obtained. If known, such sources are as follows:

Attached.

18. Plaintiff has not killed birds believed by him to be possibly within the scope of the Migratory Bird Treaty Act or the Golden Eagle Protection Act except as follows, stating for each the date and circumstances of each killing and the reason why such bird was killed:

None.

These sheets attached to Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs comprise the separate response requested in the Defendants' First Interrogatories to Plaintiffs, definitions Paragraph No. 1, and, in addition to such separate response, has reviewed the Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs to which these sheets are attached and adopt such Answers as my response, except as follows:

Attached.

/s/ Denis Eros
Signature of Plaintiff

ANSWER TO INTERROGATORY NO. 1(a)-(d)

NAME OF PLAINTIFF: Robert G. Ward

1-(a), (b) The description of Plaintiffs' artifacts which Plaintiffs believe may be subject to the Eagle Protection Act and Migratory Bird Treaty Act identifying each, where known, the type of bird feathers are as follows:

1. Artifact: Ghost dance shield—muslin on wood frame containing nine Golden Eagle Feathers

Age: 1880 Value: \$7,500.00

2. Artifact: Crow Medicine Pipe—wood, stone, beads w/3 own feathers, 3 eagle fluffs and various unidentifiable feathers.

Age: 1870 Value: \$2,200.00

3. Artifact: Crow bustle—painted par flech hide and trade cloth panels, mirror in the middle. Contains approx. 20 eagle feathers and unknown feathers.

Age: 1900 Value: \$2,500.00

4. Artifact: Plateau War Bonnet leather bead worked band with brass studs. Contains 24 Eagle Feathers

Age: 1800 Value: \$650.00

5. Artifact: Crow Bustle—two trade cloth panels—decorated w/quill work w/approx. 30 Eagle Feathers and numerous feathers from unidentifiable birds

Age: 1910 Value: \$2,300.00

6. Artifact: Southern Plains Dance Shield—painted par flech hide w/2 hide panels containing 1 bunch crow (?) feathers and 6 Eagle Feathers

Age: 1880 Value: \$1,200.00

7. Artifact: Southern Plains Dance Shield—painted par flech w/2 hide panels. Top bound w/red trade cloth—contains 10 Eagle Feathers

Age: 1890 Value: \$750.00

8. Artifact: Sioux Feathered War Bonnet—felt skull cap w/red trade cloth trailer contains 100 prairie chicken (?) tail feathers

Age: 1860 Value: \$3,000.00

9. Artifact: Kiowa Ceremonial Fan—numerous twisted leather thongs containing 12 Eagle Feathers. The base of each being beaded.

Age: 1900 Value: \$650.00

10. Artifact: Catlinte love flute (Kiowa) all natural lead and pipe stone construction with 2 Eagle Feather drops.

Age: 1870 Value: \$400.00

1-(c) Upon the Plaintiffs' belief, the dates the "birds" were obtained were prior to the estimated age of the artifact as stated. The method whereby the plaintiffs ascertained those dates for the age of the artifacts are as follows:

Having been an Indian Collector since age 3 as well as a dealer in artifacts for approx. 15 years I have bought and sold many Indian collections and collector items which required by expert ability in determining age and authenticity for business purpose.

1-(d) If such artifacts listed herein are unlawful to trade, sell or barter, Plaintiffs are unable to ascertain how such artifacts can have any value. The basis upon which the Plaintiffs have estimated the value of their artifacts is as follows:

Most of the values are directly revelant to the price which I paid as part of the various collections they were obtained from. I have been generally recognized as one of 10 professional appraisers of antique Plains Indian material for about 10 years. Member of I.A.C.A. board of directors, Antique Appraiser Assoc. S.W.A.I.A. Board of Directors and others.

16. Documents in Plaintiffs' possession relating to the acquisition of the artifacts identified herein are attached hereto or described as follows:

Most if not all of the above artifacts have been acquired as part and particle of various old collections.

17. Except as stated herein, Plaintiff is without information, knowledge or sources of information or knowledge to determine specifically how the feathers included within the artifacts were obtained. If known, such sources are as follows:

Collections from which the previous items were obtained. Dr. Nollie Mumey—Denver Colorado 1969 (approx) Monroe P. Killy—Minneapolis, Minn. 1972 (approx) (portion Green Collection—New York) 1971 (approx.) Name unknown Peoria, Ill. 1968 (approx.)

18. Plaintiff has not killed birds believed by him to be possibly within the scope of the Migratory Bird Treaty Act or the Golden Eagle Protection Act except as follows, stating for each the date and circumstances of each killing and the reason why such bird was killed:

I have hunted and fished all of my life including numerous trips to Alaska as well as several other states and would never and have never entertained the thought of killing any protected species of bird or game animal.

These sheets attached to Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs comprise the separate response requested in the Defendants' First Interrogatories to Plaintiffs, definitions Paragraph No. 1, and, in addition to such separate responses, has reviewed the Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs to which these sheets are attached and adopt such Answers as my response, except as follows:

/s/ Robert G. Ward
Signature of Plaintiff

ANSWER TO INTERROGATORY NO. 1(a)-(d)

NAME OF PLAINTIFF: Lloyd D. and Carol S. Allard

1-(a), (b) The description of Plaintiffs' artifacts which Plaintiffs believe may be subject to the Eagle Protection Act and Migratory Bird Treaty Act identifying each, where known, the type of bird feathers are as follows:

1. Artifact: Flathead Medicine Mans Ward containing Numerous Hawk, Eagle and Owl Feathers

Age: Approx. 80 yrs. Value: 400.00

2. Artifact: Flathead War Bonnett—Containing Approx 30 Eagle Feather and some hawk and owl feathers

Age: Approx. 80 yrs. Value: 1,000.00

3. Artifact: Sioux War Bonnet with Trailer containing approx 80 Eagle Feathers

Age: Approx. 80 yrs. Value: 1,500.00

4. Artifacts: Flathead War Bonnett containing approx 30 Eagle Feathers

Age: Approx. 80 yrs. Value: 800.00

5. Artifact: Flathead Bustle containing numerous Eagle, hawk and owl feathers

Age: Approx. 60 yrs. Value: 600.00

6. Artifact: Flathead Fan containing approx. 6 Eagle Feathers

Age: Approx. 40 yrs. Value: 200.00

7. Artifact: War Bonnett containing approx. 30 Eagle Feathers

Age: Approx. 50 yrs. Value: \$800.00

8. Artifact: Hawk Onnoment Containing an eagle foot and several split eagle feathers

Age: Approx. 60 yrs. Value: \$600.00

9. Artifact: Shield with three Eagle Feathers

Age: Approx. 50 yrs. Value: \$1,500.00

10. Artifact: Hair Ornament containing a bird head and two Eagle Feathers

Age: Approx. 40 yrs. Value: 400.00

11. Split in war Bonnett containing numerous hawk, owl and Eagle feathers

Age: Approx. 80 yrs. Value: \$1,500.00

12. War Bonnet containing approx. 30 Eagle Feathers

Age: Approx. 40 yrs. Value: \$1,000.00

1-(c) Upon the Plaintiffs' belief, the dates the "birds" were obtained were prior to the estimated age of the artifact as stated. The method whereby the Plaintiffs ascertained those dates for the age of the artifacts are as follows:

By expert appraisal and in some cases by documented history of each piece and in some cases personal knowledge of owners family on my reservation.

1-(d) If such artifacts listed herein are unlawful to trade, sell or barter, Plaintiffs are unable to ascertain how such artifacts can have any value. The basis upon which the Plaintiffs have estimated the value of their artifacts is as follows:

Professional appraisal and prices received for similar items at Parke-Bennet, New York in auctions held during 1969 to 1973.

16. Documents in Plaintiffs' possession relating to the acquisition of the artifacts identified herein are attached hereto or described as follows:

None

17. Except as stated herein, Plaintiff is without information, knowledge or sources of information or knowledge to determine specifically how the feathers included within the artifacts were obtained. If known, such sources are as follows:

Unknown

18. Plaintiff has not killed birds believed by him to be possibly within the scope of the Migratory Bird Treaty Act or the Golden Eagle Protection Act except as follows, stating for each the date and circumstances of each killing and the reason why such bird was killed:

None, except for licensed duck hunting a number of years ago.

These sheets attached to Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs comprise the separate response requested in the Defendants' First Interrogatories to Plaintiffs, definitions Paragraph No. 1, and, in addition to such separate responses, has reviewed the Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs to which these sheets are attached and adopt such Answers as my response, except as follows:

/s/ Lloyd D. Allard
Signature of Plaintiff

/s/ Carol S. Allard
Signature of Plaintiff

ANSWER TO INTERROGATORY NO. 1(a)-(d)

NAME OF PLAINTIFF: PIERRE G. BOVIS

1-(a), (b) The description of Plaintiffs' artifacts which Plaintiffs believe may be subject to the Eagle Protection Act and Migratory Bird Treaty Act identifying each, where known, the type of bird feathers are as follows:

1. Artifact: Mandan Horned Single Trail Bonnet—Golden Eagle feathers, Owl Feathers, Beadwork and Bells.

Age: 1850 Value: \$1,800.00

2. Artifact: Sioux Single Trail Horned Bonnet—Eagle Wing feathers, beaded headband.

Age: C 1900 Value: \$1,000.00

3. Artifact: Sioux Double Trailer Eagle Feather Bonnet—Golden Eagle feathers, beaded band, and ribbon decoration.

Age: C 1900 Value: \$2,000.00

4. Artifact: Sioux Double Trailer Bonnet—Golden Eagle Feathers. Beaded headband and various decorations.

Age: C 1900 Value: \$2,000.00

5. Artifact: Sioux Bustle, Golden Eagle Feathers—Decorated with Felt, Mirror and Bells.

Age: C 1890 Value: \$850.00

6. Artifact: Sioux Single Trailer Bonnet, Beaded Strip—Golden Eagle Feathers.

Age: C 1900 Value: \$1,500.00

7. Artifact: Sioux Horned Single Trailer Bonnet—Golden Eagle Feathers and Beaded Headband.

Age: C 1890 Value: \$1,500.00

8. Artifact: Crow Bustle, Golden Eagle Feathers—Yarn, Ribbon, Beaded rosettes.

Age: C 1880 Value: \$750.00

9. Artifact: Sioux Eagle Feather Banner—Golden.

Age: C 1900 Value: \$300.00

10. Artifact: Sioux Fan made of Golden Eagle Feathers—Buckskin with Beaded Handle.

Age: C 1900 Value: \$250.00

1-(c) Upon the Plaintiffs' belief, the dates the "birds" were obtained were prior to the estimated age of the artifact as stated. The method whereby the Plaintiffs ascertained those dates for the age of the artifacts are as follows:

As I am a professional appraiser and I am regarded as an expert on Plains material by many other collectors dealers and museums I feel secure in stating the age on those items.

1-(d) If such artifacts listed herein are unlawful to trade, sell or barter, Plaintiffs are unable to ascertain how such artifacts can have any value. The basis upon which the Plaintiffs have estimated the value of their artifacts is as follows:

This type of item has been traded, bartered and sold by traders and dealers for about a century and has never been recognized as "illegal" material—even public auctions in recent years offered these items publicly and sold them with no recriminations until a couple of years ago. So this is how we come up with a value.

16. Documents in Plaintiffs' possession relating to the acquisition of the artifacts identified herein are attached hereto or described as follows:

These items were on consignment to me from various private collectors—as I felt secure about them and did not believe the law was meant to be retroactive! I offered them for sale and was arrested for this act. They are historical pieces in my opinion. These have been returned to their owners until the law is amended.

17. Except as stated herein, Plaintiff is without information, knowledge or sources of information or knowl-

edge to determine specifically how the feathers included within the artifacts were obtained.

I feel that I have enough experience to ascertain origin, (tribal) and age of this type of historical artifact. If known, such sources are as follows:

Original sources—they were all made by AMERICAN INDIANS over a century ago or at turn of century.

18. Plaintiff has not killed birds believed by him to be possibly within the scope of the Migratory Bird Treaty Act or the Golden Eagle Protection Act except as follows, stating for each the date and circumstances of each killing and the reason why such bird was killed:

I am not a hunter and have never killed a bird. I have never killed any animal of any kind for personal or business reasons.

These sheets attached to Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs comprise the separate response requested in the Defendants' First Interrogatories to Plaintiffs, definitions Paragraph No. 1, and, in addition to such separate responses, has reviewed the Plaintiffs' Answers to Defendants' First Interrogatories to Plaintiffs to which these sheets are attached and adopt such Answers as my response, except as follows:

No further comments—I believe my point is very clear and I believe that historical items should be preserved and laws should be enforced for violation of living birds and animals of this present time. Leave alone items made a century ago and citizens rights should not be violated further in respect to genuine artifacts.

/s/ Pierre G. Bovis
Signature of Plaintiff

/s/ Sylvia Bovis
Signature of Plaintiff

SUPREME COURT OF THE UNITED STATES

No. 78-740

CECIL D. ANDRUS, Secretary of the Interior, ET AL.,
APPELLANTS

v.

L. DOUGLAS ALLARD, ET AL.

APPEAL from the United States District Court for the District of Colorado.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 21, 1979